

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

No. CR 10-206 WHA

Plaintiff,

v.

**ORDER DENYING REQUESTS
TO REDUCE SENTENCE AND
APPOINT COUNSEL**

ANTONIO MAGANA-CASTILLO,

Defendant.

Defendant Antonio Magana-Castillo submitted a letter to the Court requesting a modification of his sentence in light of an amendment to Section 2L1.2(b)(1)(A) of the United States Sentencing Commission Guidelines, effective November 1, 2011. In the same letter, defendant also requested appointment of counsel to prepare a motion seeking relief based on the above-stated amendment to the Guidelines. An order issued requiring the government to provide a response and recommendation to the Court on the issue. The government responded and opposed the sentence reduction on the ground that the amendment to Section 2L1.2 did not contain a retroactivity provision. Defendant was then ordered to either file a response to the government's opposition or submit a motion for appointment of counsel by March 9, 2012. Defendant has not filed either. The order notes that defendant Magana-Castillo has also submitted a Section 2255 motion, based on two claims of ineffective assistance of counsel. That motion is not at issue here.

1 On May 13, 2010, defendant pleaded guilty to a one count indictment charging him with
2 illegal reentry in violation of 18 U.S.C. 1326. The presentence report prepared by probation
3 calculated the adjusted offense level as 21, and the criminal history category as six, with a
4 resulting Guidelines range of 77 to 96 months imprisonment. The parties did not enter into a plea
5 agreement. On August 5, 2010, defendant was sentenced to 65 months imprisonment.

6 The amendment to Section 2L1.2 became effective November 1, 2011, after defendant
7 was sentenced. The amendment does not contain a retroactivity provision. Defendant's request
8 to apply the November 1, 2011 amendment to his case and reduce his sentence is, therefore,
9 **DENIED**. As such, there is no need to appoint counsel to further brief a motion for a sentence
10 reduction based on the November 1, 2011 amendment. The request for appointment of counsel
11 on this motion is, therefore, **DENIED**.

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13 **IT IS SO ORDERED.**

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15 Dated: April 13, 2012.



16 WILLIAM ALSUP
17 UNITED STATES DISTRICT JUDGE
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